

**United States District Court**  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

TROY CUNNINGHAM,

Plaintiff,

v.

THE KITCHEN COLLECTION, LLC,

Defendant.

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**CIVIL ACTION NO. 4:17-CV-770**  
**JUDGE MAZZANT/JUDGE JOHNSON**

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On August 14, 2018, the report of the Magistrate Judge (Dkt. #42) was entered containing proposed findings of fact and recommendations that Plaintiff Troy Cunningham's Motion to Conditionally Certify Collective Action and to Approve and Facilitate Notice to Similarly Situated Employees (Dkt. #10) should be **GRANTED IN PART** and **DENIED IN PART**.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court. Therefore, Plaintiff Troy Cunningham's Motion to Conditionally Certify Collective Action and to Approve and Facilitate Notice to Similarly Situated Employees (Dkt. #10) is **GRANTED IN PART** and **DENIED IN PART**, as follows:

This matter will proceed as a FLSA collective action, with the potential class plaintiffs described as follows:

**All persons who are or have been employed by The Kitchen Collection, LLC as Store Managers ("SMs"), and who were subject to classification as salaried employees, at any time during the three-year period preceding the date of this Order.**

Additionally, the Court notes that the parties filed a Joint Notice of Filing Agreed Notice and Consent to Join Forms (the “Joint Notice”) (Dkt. #48). Attached to the Joint Notice is the parties’ proposed Court-Authorized Notice, which includes both the notice and consent to join forms. *See* Dkt. #48-1. Upon review of the Joint Notice, the Court finds the proposed Court-Authorized Notice (Dkt. #48-1) is **APPROVED**. The approved forms, attached to this Order as Exhibit A, shall be used in this matter to provide notice to potential opt-in plaintiffs. Further, the opt-in period begins the date of this Order.

**IT IS SO ORDERED.**

**SIGNED this 10th day of September, 2018.**

  
AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE

EXHIBIT A  
**COURT-AUTHORIZED NOTICE**

The United States District Court for the Eastern District of Texas approved this Notice, but takes no position on the merits of the case.

**If you were employed as a salaried Store Manager (“SM”) at The Kitchen Collection between September 4, 2015 and the present, please read this notice.**

***A collective action lawsuit may affect your legal rights.***

*This is a court authorized notice. This is not a solicitation from a lawyer.*

- Former SMs Troy Cunningham and Katie McMullen (“Plaintiffs”) sued The Kitchen Collection, LLC (“The Kitchen Collection” or “Defendant”), claiming that they and other SMs are owed overtime pay under the Fair Labor Standards Act (“FLSA”) for hours they worked over 40 in a workweek.
- The lawsuit is proceeding as a collective action on behalf of all SMs who worked for The Kitchen Collection at any location at any time between September 4, 2015 and the present who were classified as exempt employees and did not receive overtime compensation for hours worked over 40 in a workweek.
- The Court has authorized the parties to send out this notice of the lawsuit. The Court has not decided who is right and who is wrong.
- Your legal rights may be affected, and you have a choice to make now.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
<b>RETURN THE “CONSENT TO JOIN” FORM</b>	<p>If you choose to be included, you will share in any monetary recovery that might come from a trial or a settlement in this lawsuit. If you choose to be included and the Plaintiffs are successful, you give up any rights to sue The Kitchen Collection on your own for the same claims asserted in this lawsuit.</p> <p><b>If you want to be included, you must complete and return the “Consent to Join” form included with this Notice by no later than [a date 60 days from mailing of the notice; if a notice is returned undeliverable and a new address is located, the notice period for that putative class member will close no later than 120 days after the date of the first mailing of the original notice to the putative class member].</b> By doing so, you will “opt in” and join the lawsuit as a member of the Collective.</p>

<b>DO NOTHING</b>	<p>By doing nothing, you will NOT be included in this lawsuit. This means that you give up the possibility of a monetary recovery that may come from a trial or settlement if the Plaintiffs are successful.</p> <p>However, you keep any rights to sue The Kitchen Collection separately about the same legal claims in this lawsuit. You should be aware that your time to bring FLSA claims is limited by either a two- or three-year statute of limitations.</p>
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**This notice contains information that affects your rights. Please read it carefully.**

### **1. Why did I get this notice?**

You are getting this notice because The Kitchen Collection's records show that you were an SM between September 4, 2015 and the present.

### **2. What is this lawsuit about?**

The lawsuit alleges that The Kitchen Collection misclassified SMs as "exempt" employees, instead of properly classifying them as employees who are entitled to the protections of the FLSA, and failed to pay them overtime for hours worked over 40 in a workweek. The Plaintiffs claim that the duties they primarily performed, such as cleaning, merchandising, unpacking and processing freight, putting prices on merchandise, and working on assignments provided by The Kitchen Collection's corporate office, entitled them to receive overtime compensation like other hourly employees of The Kitchen Collection who similarly performed such duties.

Defendant denies that it violated any laws or did anything wrong. The Court has not made any determination as to the merits of these allegations.

This lawsuit was filed on October 26, 2017, and is known as *Cunningham v. The Kitchen Collection, LLC*, Case No. 4:17-cv-00770, and is pending before the Honorable Amos Mazzant, III in the United States District Court for the Eastern District of Texas.

### **3. What are the Plaintiffs asking for?**

The Plaintiffs seek to recover unpaid overtime and an additional equal amount as "liquidated damages," which doubles the amount of wages owed. The lawsuit also seeks recovery of costs and attorneys' fees.

### **4. What is a Collective Action and who is involved?**

In a collective action lawsuit, one or more persons who have similar claims can bring a lawsuit that includes others who have similar claims. If you complete a Consent to Join form and join the case by \_\_\_\_\_ [a date 60 days from mailing of the notice; if a notice is returned undeliverable and a new address is located, the notice period for that putative class member will close no later than 120 days after the date of the first mailing of the original notice to the

**putative class member**], you will become part of the “Collective.” In a collective action, one court resolves the issues for everyone who decides to join the case.

#### **5. Why is this lawsuit a Collective Action?**

The Court has made a preliminary determination that the Plaintiffs may be similarly situated to other The Kitchen Collection SMs and authorized this case to proceed conditionally as a Collective Action under Section 216(b) of the FLSA.

#### **6. What happens if I join this lawsuit?**

If you choose to join the Collective, you will be bound by and share in any ruling, settlement or judgment, whether favorable or unfavorable. You will also share in any proceeds from a settlement or favorable judgment. While this lawsuit is pending, you may be asked to provide discovery and relevant information regarding the work you performed at The Kitchen Collection.

By joining this lawsuit, you designate the named Plaintiff as your representative, and to the fullest extent possible, you designate the named Plaintiff and his Counsel to make decisions on your behalf concerning the case, the method and manner of conducting the case, and all other matters pertaining to this lawsuit. Decisions made and agreements entered into by Plaintiff relating to this lawsuit will be binding on you if you join the lawsuit.

#### **7. Can The Kitchen Collection and/or my current employer retaliate against me if I join the lawsuit?**

No. It is a violation of federal law for any employer or The Kitchen Collection to fire, discipline, or retaliate against you in any manner for taking part in this case.

#### **8. What happens if I do nothing at all?**

If you do nothing, you will not be entitled to share in any amounts recovered by the Plaintiff for the FLSA claims in this case but you will not be affected by any decision regarding those claims, whether favorable or unfavorable. You will be free to hire your own lawyer and file your own FLSA lawsuit, should you so desire. You should be aware that your time to bring FLSA claims is limited by either a two- or three-year statute of limitations.

#### **9. How do I ask to be included in this case?**

Enclosed is a form called “Consent to Join.” **If you choose to join this lawsuit, it is extremely important that you read, sign, and promptly return the Consent to Join form.** An addressed and postage-paid envelope is enclosed for your convenience. Should the enclosed envelope be lost or misplaced, the Consent to Join Form must be sent to (either via mail, e-mail or facsimile):

**[CLAIMS ADMINISTRATOR’S ADDRESS AND CONTACT INFO]**

**The signed Consent to Join form must be postmarked, e-mailed, faxed, or submitted through the [case website] by \_\_\_\_\_ [a date 60 days from mailing of the notice].**

#### **10. If I join this case, do I have a lawyer?**

If you choose to join this lawsuit you will be represented by Plaintiffs' Counsel:

Gregg I. Shavitz  
Camar R. Jones  
Alan L. Quiles  
Shavitz Law Group, P.A.  
951 Yamato Road, Suite 285  
Boca Raton, FL 33431  
(561) 447-8888 or (800) 616-4000  
info@shavitzlaw.com  
www.shavitzlaw.com

#### **11. Should I get my own lawyer?**

You do not need to hire your own lawyer because Plaintiff's Counsel will be working on your behalf. However, if you do not want to be represented by Shavitz Law Group, P.A. in connection with this lawsuit, you may choose to retain your own counsel (at your own expense).

#### **12. How will the lawyers be paid?**

The Plaintiff has entered into a contingency fee agreement with Plaintiff's Counsel. Under this agreement, you are not responsible for paying any of the attorneys' fees or costs expended in this lawsuit. In other words, even if there is no recovery, you pay nothing.

Under the fee agreement, in the event there is a recovery, Plaintiff's Counsel will apply to the Court for a portion of any settlement obtained or money judgment entered in favor of Plaintiff and the Collective in the amount the greater of: (1) the "lodestar" amount, calculated by multiplying reasonable hourly rates by the amount of time expended on the lawsuit, or (2) one-third of the gross settlement or judgment amount. Plaintiff's Counsel will also apply to the Court for reasonable costs. Fees and costs may be part of a settlement obtained or money judgment entered in favor of Plaintiff, or may be ordered by the Court to be separately paid by The Kitchen Collection, or may be a combination of the two.

#### **13. Questions?**

If you have any questions, you may write, e-mail or call Plaintiffs' Counsel at:

Gregg I. Shavitz  
Camar R. Jones  
Alan L. Quiles  
Shavitz Law Group, P.A.  
951 Yamato Road, Suite 285  
Boca Raton, FL 33431

(561) 447-8888 or (800) 616-4000  
www.shavitzlaw.com

You can also visit [**case website**] for additional information.

DATED:                     , 2018

UNITED STATES DISTRICT  
COURT EASTERN DISTRICT  
OF TEXAS SHERMAN  
DIVISION

TROY CUNNINGHAM,

Plaintiff,

v.

THE KITCHEN COLLECTION, LLC,

Defendant.

Case No. 4:17-cv-00770

**CONSENT TO JOIN**

1. I consent to be a party plaintiff in a lawsuit against The Kitchen Collection, LLC and/or related entities and individuals (collectively, “The Kitchen Collection”), in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I designate Shavitz Law Group, P.A. (“SLG”) to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that SLG will ask the Court for attorneys’ fees from any settlement or judgment in the amount of the greater of: (i) the “lodestar” amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit; or (ii) 1/3 of the gross settlement or judgment amount. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.

\_\_\_\_\_  
Full Legal Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Maiden or Other Names Worked Under

\_\_\_\_\_  
E-mail Address\*

\_\_\_\_\_  
Street Address \*

\_\_\_\_\_  
City, State and Zip Code\*

\_\_\_\_\_  
Cell Phone\*

\_\_\_\_\_  
Home Telephone Number\*

\*This information will be redacted and will not be filed in the public record. This information will be used solely for Plaintiffs’ Counsel to communicate with you and provide you with important, periodic case status updates.